IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
APPELLATE CIVIL JURISDICTION

LETTERS PATENT APPEAL NO.406 OF 2004

Subhash Kondiram More ...Appellant
Vs.
Municipal Corpn. Of Greater Bombay ...Respondents

Mr.S.A.Sawant for Appellant
Mr.A.J.Bhor for Respondents

CORAM: SHRI J.N.PATEL &
SMT. ROSHAN DALVI, JJ.
DATED: 4TH APRIL, 2007

P.C.

1. Heard.

2. The employees has moved this Court impugning the decision of the learned single Judge in Writ Petition No.16 of 1996 filed by the Respondents Municipal Corporation challenging the order dated10th March, 1995 passed by the Labour Court in Application (IDA) No.537 of 1986 under Section 33C(2) of the Industrial Disputes Act, 1947.

3. The claim relates to a sum of rs.57,466.50 and cost which the Appellant sought to be adjudicated under Section

33C(2) of the Industrial Disputes Act, 1947. The Labour Court allowed the application, which came to be challenged before the learned single Judge. By judgment dated 12th August, 1995, the learned single Judge found that the decision cannot be sustained in law as the amount claimed by the Appellant is not computed by the appropriate forum and therefore, proceedings under Section 33C(2) was not maintainable.

4. We do not find that the learned single Judge has committed any error or illegality in the matter and particularly in view of the decision rendered by the Supreme Court in the case of State of UP Vs. Brijpal Singh (2005) 8 Supreme Court Cases 58, as admittedly the amount claimed by the Appellant workman in the sum of Rs.57,466.50 for the services rendered by him as an Artist, though he was in employment as Painter. He clarifies that there is no finding of a competent tribunal that the Appellant was employed as an Artist, or engaged in the said capacity to claim the said amount which according to the Appellant he is entitled as his services as an Artist were utilised by the Respondent Corporation.

5. The learned Counsel appearing for the Appellant submitted that the Appellant has been agitating the claim

since the year 1986 and the Labour Court decided the case in his favour on 10th March, 1995, and therefore, it will be unjust to revert the Appellant to approach the Labour Court to adjudicate the dispute as to whether he was employed as the Painter or as an Artist, and for that the learned Counsel for the Appellant has placed reliance on the observations made by the Supreme Court in the case of "Madras Port Trust. Vs. Hymanshu International by its Proprietor V. Venkatadri, AIR 1979, SC 1144. The Supreme Court observed that :

" *It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens* .**"**

6. We find that the facts on the basis of which these observations came to be made by the Supreme Court in the aforesaid case was in relation to refund of amount of wharfage and transit charges which was held to be barred by Section 110 of the Madras Port Trust Act (II of 1905) and therefore, may not be strictly applicable to the case of the Appellant, but, considering the fact that the Appellant is agitating the issue from the year 1986, we direct that the Respondent would consider his claim sympathetically if he

makes such a representation to the Respondent Employer Municipal Corporation of Mahanagar, Mumbai, within two weeks of passing of this order, the same can be forwarded to the competent Authority who will take a decision in the matter within 6 months. With these directions the Appeal stands dismissed.

(SMT.ROSHAN DALVI, J.) **(SHRI J.N.PATEL, J.)**